

FILED	LODGED
RECEIVED	COPY
JAN 26 2024	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

Mark William Kelly Pro Se Defendant  
PO Box 1215  
Vail, AZ, 85641  
(520). 441-7705 | (520) 441-7704  
[mark@kmaes.com](mailto:mark@kmaes.com)

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA**  
**IN AND FOR THE COUNTY OF PIMA**

Mark William Kelly,  
Plaintiff,  
VS

Case No.: CV-24-00001-TUC-JCH(PSOT)

**SECOND AMENDED COMPLAINT**

Pima County Sheriffs Department, Deputy  
Gina M. Lumia (Badge #7532), Supervisor  
Guy A. Marchal (Badge #5804), and James  
Hinkle, Desert Earth Contracting LLC.,  
Richmond American Construction Inc.  
Defendants

**COMPLAINT**  
**JURISDICTION AND VENUE:**

1. This action arises under the laws of the United States and falls within the jurisdiction of this Honorable Court pursuant to 28 U.S. Code § 1331, which grants federal courts original jurisdiction over civil actions arising under the Constitution and laws of the United States.
2. Venue is proper in this district pursuant to 28 U.S. Code § 1391(b)(2), as a substantial part of the events giving rise to the claims occurred in this district and the Defendants reside, can be found, or conduct substantial business within this district.

**RELEVANT U.S. CODES PERTAINING TO CIVIL RIGHT VIOLATIONS:**

1. 42 U.S. Code § 1983: Violation of rights under the color of state law.
2. 42 U.S. Code § 1985: Conspiracy to interfere with civil rights.

1 based on these false accusations.

- 2 2. Despite a lack of evidence supporting the alleged wrongdoing, Plaintiff was forcibly  
3 removed from their vehicle, arrested without probable cause, and subjected to excessive  
4 force, leading to permanent nerve damage due to the excessively tight application of  
5 handcuffs.

6 **Violation of Constitutional Rights:**

7 The Defendants' actions exhibit a flagrant disregard for the bedrock principles enshrined in our  
8 Constitution, manifesting in a litany of egregious violations:

9 1. **Fourth Amendment Violation - Unwarranted Search and Seizure:**

10 A transgression of constitutional proportions unfolded as I engaged in peaceful  
11 recording from the protective confines of my vehicle on a public easement, resulting in  
12 subsequent unwarranted intrusions.

13 2. **Fourth and Fourteenth Amendments Violation - Unlawful Arrest and Excessive Use**  
14 **of Force:**

15 My forcible extraction from the vehicle, coupled with the application of handcuffs  
16 tightened to a degree causing sustained physical affliction, constitutes an alarming  
17 breach of my constitutional rights.

18 3. **Fourteenth Amendment Violation - Equal Protection Clause Violation:**

19 Acting under the guise of state authority, the Defendants, with wanton disregard,  
20 deprived me of the safeguards guaranteed by the 14th Amendment's Equal Protection  
21 Clause, subjecting me to unjust and differential treatment bereft of any justifiable  
22 foundation.

23 4. **First Amendment Violation - First Amendment Infringement:**

24 Deputies willfully engaged me, unfoundedly accused me of disorderly conduct, and  
25 disingenuously asserted an inability to discern the position of my hands, thereby  
26 escalating the situation and instilling a genuine fear for my personal safety.

27 5. **Fourth and Fourteenth Amendments Violation - Kidnapping Allegation:**

28 The deputy, without valid cause, explicitly conveyed an intention to confine me,

1 arbitrarily designating me a threat.

2 **6. First and Fourteenth Amendments Violation - Prior Knowledge of Complaints:**

3 Defendants exhibited a clear awareness of my documented grievances against the  
4 construction company, evidencing a willful neglect to address longstanding concerns  
5 regarding county ordinance violations.

6 **7. First, Fourth, and Fourteenth Amendments Violation - Attempted Coercion and**  
7 **Foreknowledge:**

8 Sergeant Marchal's endeavor to coerce my cooperation in their investigation, followed  
9 by my unwarranted removal and arrest, was underscored by his foreknowledge,  
10 explicitly expressed in the ominous declaration, "This is going to be a lawsuit." This  
11 statement implies a prescient understanding of the impropriety of their actions and the  
12 subsequent legal ramifications.

13 **8. Fourth and Fourteenth Amendments Violation - Failure to Follow Misdemeanor**  
14 **Protocol:**

15 Deputy Lumia deviated from established protocol, inexplicably categorizing me as a  
16 threat and opting for an unconventional jail transfer for a typical misdemeanor offense.

17 **9. Fourth and Fourteenth Amendments Violation - Forced Search and Seizure at Jail:**

18 The indignant violations persisted at the jail, where I was subjected to further invasive  
19 searches, including a forced COVID swab and an unwarranted visual body cavity  
20 examination including fingerprinting and intrusive questions about my health.

21 **10. Fourth and Fourteenth Amendments Violation - Unfounded Charges and**  
22 **Subsequent Dismissal:**

23 The baseless nature of the charges, ultimately dismissed, serves as a stark testament to  
24 the groundlessness of the arrest and underscores the severity of the infringements on  
25 my constitutional rights.

26 These egregious transgressions collectively demand immediate legal redress and corrective  
27 measures to rectify the profound injuries inflicted upon my constitutionally protected rights.

28 **Live Streaming Evidence:**

1. Throughout the entire incident, Plaintiff was live-streaming the encounter on the internet, providing real-time evidence of the events.
2. This live stream serves to corroborate Plaintiff's account, substantiating the unwarranted actions and constitutional violations committed by the Defendants.
3. The Plaintiff, Mark William Kelly, a law-abiding citizen, was peacefully recording in a public easement from their vehicle when confronted by Construction Worker James Hinkle without any lawful basis or justification on or about January 18th, 2022.
4. Following the arrest, Plaintiff was subjected to further unlawful treatment at the jail, including strip-searching, fingerprinting, and a forced COVID test, conducted without proper legal grounds. Plaintiff was unjustly held against their will for several hours, leading to false imprisonment.
5. Despite Supervisor Marchal's prior knowledge of Plaintiff's lawful recording activities and the underlying reasons, Defendants subjected Plaintiff to unwarranted arrest,

**CLAIMS FOR RELIEF:**

1. Violation of Fourth Amendment rights against unreasonable search and seizure.
2. Violation of First Amendment rights through retaliation for protected activity.
3. Excessive use of force resulting in injury, violating Plaintiff's civil rights.
4. False imprisonment and unlawful detention without legal basis.
5. Conspiracy to interfere with civil rights.
6. Deprivation of rights under color of law.
7. Violation of the 14th Amendment's Equal Protection and Due Process Clauses.

**PRAYER FOR RELIEF:**

1. Compensatory damages in the amount of \$5,000,000 for physical injury, emotional distress, humiliation, and violation of constitutional rights.
2. Punitive damages against Defendants due to their egregious and willful conduct.
3. Declaratory relief affirming Plaintiff's rights and preventing future violations.
4. Injunctive relief ensuring proper training and oversight within the Sheriffs Department to prevent similar incidents.

1 5. Attorneys' fees and costs incurred in pursuing this action.

2 **JURY DEMAND:**

3 Plaintiff demands a trial by jury on all claims so triable.

4  
5 **CONCLUSION:**

6 Wherefore, Plaintiff Mark W. Kelly respectfully requests this Honorable Court to award the relief  
7 sought herein and any other relief deemed just and proper by this Court.

8  
9 Respectfully Submitted,

10 **Mark William Kelly**

11 

12 P.O. Box 1215

13 Vail, AZ, 85641

14 (520). 441-7705 | (520) 441-7704

15 [mark@kmaes.com](mailto:mark@kmaes.com)

16  
17  
18 **ORIGINAL** of the foregoing filed

19 this 26th day of January 2024 with:

20 Clerk of the Court:

21 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

22 IN THE COUNTY OF PIMA

23  
24 **COPY** of the foregoing to be served to:

25 Defendants on or about January 28th, 2024  
26  
27  
28